

**Letter of Findings Number: 04-20120466P
Negligence Penalty
For the Periods 2009, 2010, and 2011**

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ISSUE

I. Tax Administration – Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana company. Taxpayer operates a retail operation of a convenience store and sales of gasoline and diesel fuel. Taxpayer started operating in July 2009. Inside store sales consist of tobacco products, lottery tickets, soft drinks, prepaid gift cards and grocery items. Taxpayer also operates a Subway food restaurant inside the convenience store.

In 2011, the Indiana Department of Revenue ("Department") conducted a sales/use tax audit of Taxpayer's business records. Pursuant to the audit, the Department determined that Taxpayer underreported the sales they made and found numerous mistakes. The Department audit found that Taxpayer failed to fully report their sales tax liability; only 33 percent of inside sales were reported. The Department's audit also found that Taxpayer failed to fully report gasoline sales. Additionally, Taxpayer's exempt diesel sales were not supported with exemption certificates, so the Department taxed those transactions. As a result, the Department assessed additional sales tax, use tax, penalty, and interest.

Taxpayer protests the Department's penalty billing on the sales tax audit. An administrative hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Tax Administration – Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the negligence penalty assessed for underreporting sales.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer states that it had no intent to disregard, nor willfully neglect, the laws of Indiana regarding its sales and use tax obligations. Taxpayer states that this was the first time that they were audited and they were unsure of the proper collection and reporting procedures. Taxpayer points out that this is not a situation where they did not report sales; this is a situation where they underreported the sales that they made.

Indiana law requires Taxpayer to demonstrate that it had reasonable cause for not paying the full amount of

sales or use tax due. In order to establish reasonable cause, Taxpayer must demonstrate that it exercised "ordinary business care and prudence" in conducting the duties from which the additional tax and penalty arose. [45 IAC 15-11-2\(c\)](#).

Although the Taxpayer concedes that they plan to institute better record keeping and that they simply underreported the sales, they have not provided a reasonable cause for the numerous mistakes found by the Department. They have not demonstrated a reasonable cause as to why they had not kept common business documents. Taxpayer did not have cash register receipts for review and only kept an excel spreadsheet. Additionally, Taxpayer confirmed that one of the owners owned another gas station in the past for about 15 years. Taxpayer should have known how to keep records and fully report the sales.

The Department finds that Taxpayer has not made an affirmative showing of reasonable cause.

FINDING

Taxpayer's protest is respectfully denied.

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